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ATTORNEYS FOR DEFENDANTS JINGIT LLC, JINGIT HOLDINGS, LLC, JINGIT FINANCIAL SERVICES, LLC, TODD ROOKE, JOE ROGNESS, SAM ASHKAR, PHIL HAZEL, HOLLY OLIVER, SHANNON DAVIS, JUSTIN JAMES, CHRIS OHLSEN, DAN FRAWLEY, DAVE MOOREHOUSE, II, TONY ABENA, CHRIS KARLS, JOHN E. FLEMING, AND MUSIC.ME, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Indiezone, Inc., a Delaware corporation, and EoBuy, Limited an Irish private limited company,

Case No: 4:13-CV-04280 YGR/EDL
Hearing Date: April 1, 2014
Hearing Time: 2:00 p.m.
Place: Oakland Courthouse
Courtroom: 5, Second Floor

Todd Rooke, Joe Rogness, Phil Hazel, Sam Ashkar, Holly Oliver and U.S. Bank, collectively the ***RICO Defendants***;

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFFS'
MOTION TO AMEND THEIR
SUMMONS AND COMPLAINT**

Jingit LLC, Jingit Holdings, LLC, Jingit Financial Services LLC., Music.Me, LLC., Tony Abena, John E. Fleming, Dan Frawley, Dave Moorehouse II, Chris Ohlsen, Justin James, Shannon Davis, Chris Karls in their capacities as officers, agents and/or employees of Jingit LLC, **Defendants in Negligence**,

DEFS.' MEM. IN OPP'N TO PLS.' MOT. TO
AMEND SUMMONS AND COMPLAINT
- Case No: 4:13-CV-04280 YGR/EDL

1 *and Aiding/Abetting;*

2 Wal-Mart, General Electric, Target, DOE(s) and
 3 ROE(s) 1 through 10, ***Defendants in Negligence***
Secondary-Vicarious Infringement,

4 Defendants.

5

INTRODUCTION

6 After admitting that current plaintiff eoBuy, Limited is a dissolved Irish corporation that
 7 lacks capacity to bring suit, Plaintiffs now seek leave to amend their Complaint to add a new
 8 purported entity that they say is an Irish company named “eoBuy Ventures Limited.” However, the
 9 purported Irish entity that they seek to add as a plaintiff, “eoBuy Ventures Limited,” also *does not*
 10 *exist.* Therefore, the proposed amendment would be futile, and this Court should deny Plaintiffs’
 11 motion.

12

ARGUMENT

13

This Court Should Deny Plaintiffs’ Motion to Amend Their Complaint Because the 14 Proposed New Plaintiff Does Not Exist; Therefore, Amendment Would be Futile.

15 The complaint filed in this action named two plaintiffs, Indiezone, Inc. and eoBuy, Limited.
 16 (Compl., ECF 1, Caption, p. 1 & ¶ 26.) The Jingit Defendants¹ brought a motion to, *inter alia*,
 17 dismiss eoBuy, Limited because, as a dissolved Irish corporation, it lacks capacity to bring suit under
 18 governing Irish law.² (Mot. of Defs. to Compel Arbitration, ECF 29, Sec. II; Declaration of Brian
 19 Walker (“Walker Decl.”), ECF 30, ¶¶ 5-9, Exs. A & B.) In response, Plaintiffs *admitted* that eoBuy,
 20 Limited had dissolved in 2008 and therefore lacked capacity to bring suit. (“There is no genuine
 21

22

23 ¹ “Jingit Defendants” are Todd Rooke, Joe Rogness, Phil Hazel, Sam Ashkar, Holly Oliver,
 24 Jingit, LLC, Jingit Holdings, LLC, Jingit Financial Services, LLC, Music.Me, LLC, Tony Abena,
 25 John E. Fleming, Dan Frawley, Dave Moorehouse II, Chris Ohlsen, Justin James, Shannon Davis
 and Chris Karls. Defendant U.S. Bank also joined the Jingit Defendants’ Motion to Dismiss. (ECF
 35.)

26 ² Defendants also note that the corporate status of plaintiff Indiezone, Inc. had been forfeited
 27 under Delaware law since June 11, 2009, and was only recently reinstated on January 24, 2014. *See*
 28 Declaration of Joseph P. Ceronsky, ECF 62-1 and 62-2, Exs. A & B.) It appears that Indiezone’s
 reinstatement of its corporate status, however, is retroactively effective. *See* Del. Code Ann. Title 8,
 § 312(e).

1 contest that ... eobuy Limited ... was dissolved on April 1, 2008.” Pls.’ Mem. in Opp’n, ECF 54, p.
 2 9; *see also* Declaration of Conor Fennelly (“Fennelly Decl.”), ECF 54-1, ¶ 1.) Plaintiffs now bring
 3 this motion seeking leave to amend their Complaint “to add or correct the corporate entity naming
 4 eoBuy Ventures Limited ... as the intended Plaintiff....” (Declaration of Douglas R. Dollinger
 5 “Dollinger Decl.”, ECF 57-1, p. 2.)
 6

7 Plaintiffs represent and have submitted a declaration of Conner Fennelly, the CEO of
 8 plaintiff Indiezone, declaring that eoBuy Ventures Limited is “a company formed under the laws of
 9 Ireland,” which “has been doing business as eoBuy since August 2008....” (*Id.* p. 3; Fennelly Decl.,
 10 ECF 54-1, ¶ 3.) The proposed amended complaint seeks to add the purported entity eoBuy Ventures
 11 Limited in place of the original plaintiff eoBuy, Limited, but it otherwise repeats and leaves
 12 unchanged all substantive allegations set forth in the original Complaint and basis for the claims of
 13 this “eoBuy” plaintiff. (*See id.*, pp. 2-3, and compare Compl., ECF 1, p. 1, caption & ¶ 26, with
 14 proposed amended complaint, ECF 57-1, Ex. A, p. 1, caption & ¶ 26.) Thus, in the proposed
 15 amended complaint, all background facts formerly attributed to eoBuy, Limited in the original
 16 complaint would now be attributed to the purported entity eoBuy Ventures Limited, even if those
 17 alleged facts occurred before eoBuy Ventures Limited was supposedly organized in 2008 and/or
 18 could only apply to the dissolved eoBuy, Limited entity. (*See, e.g.*, Compl., ECF 1, ¶¶ 77-80, 100-
 19 111, 122-124.)
 20

22 Nonetheless, routine investigation of the public Irish Registrar reveals that the purported
 23 entity eoBuy Ventures Limited does not exist; no such company was ever formed under the laws of
 24 Ireland as Plaintiffs and Mr. Fennelly now claim. (*See* Supplemental Declaration of Brian Walker,
 25 “Supp. Walker Decl.”, ECF 61, ¶¶ 3-4, Ex. A.)³ Nor is there a record of any other entity organized
 26

27 ³ The fact of eoBuy Ventures Limited’s nonexistence is reflected in the public records of the
 28 Irish Registrar, and may also be independently verified by the Court by entering the name “eoBuy”
 into the Registrar’s public website, available at www.cro.ie/search. (Supp. Walker Decl., ECF 61,
 DEF’S. MEM. IN OPP’N TO PLS.’ MOT. TO
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1 under the laws of Ireland with the term “eoBuy” as part of its name with the exception of the
 2 dissolved plaintiff eoBuy, Limited. (*Id.* ¶ 5, Ex. B.)⁴ For this simple reason, the proposed
 3 amendment to add eoBuy Ventures Limited as a plaintiff would be futile because it too is non-
 4 existent and thus lacks capacity to sue.
 5

6 While leave to amend under Rule 15(a) “shall be freely given when justice so requires,” the
 7 prerogative is not limitless. “The power to grant leave to amend … is entrusted to the discretion of
 8 the district court, which determines the propriety of a motion to amend by ascertaining the presence
 9 of any of four factors: bad faith, undue delay, prejudice to the opposing party, and/or futility.” *Serra*
 10 *v. Lappin*, 600 F.3d 1191, 1200 (9th Cir. 2010) (internal quotations omitted) (affirming denial of
 11 leave to amend based on futility). “However, each [factor] is not given equal weight. Futility of
 12 amendment can, by itself, justify the denial of a motion for leave to amend.” *Bonin v. Calderon*, 59
 13 F.3d 815, 845 (9th Cir. 1995) (denying leave to amend based on futility). Here, futility justifies the
 14 denial of Plaintiffs’ motion for leave to amend because proposed plaintiff eoBuy Ventures Limited
 15 does not exist and thus cannot have capacity to sue. Cf. *In re Flash Memory Antitrust Litig.*, No. C
 16 07-0086, 2010 U.S. Dist. LEXIS 66466, at *36-39 (N.D. Cal. June 9, 2010) (denying leave to amend
 17 on futility grounds because corporation sought to be joined was dissolved and therefore lacked legal
 18 capacity to sue). This Court should deny Plaintiffs’ motion.
 19

20 CONCLUSION

21
 22 For the foregoing reasons, the Jingit Defendants respectfully ask this Court to deny Plaintiffs’
 23 Motion to Amend Their Summons and Complaint.
 24

25 ¶4.)

26 ⁴ The Irish Registrar also shows that Conor Fennelly recently registered the trade name
 27 “eobuy” on February 21, 2014, as doing business for an Irish company called “Laraghcon Chauffeur
 28 Drive Limited.” (Supp. Walker Decl., ECF 61, ¶ 6, Ex. C.) Laraghcon Chauffeur Drive Limited
 appears to be a car service in Ireland also doing business under the trade name “Lucan Taxi.” See
www.lucantaxi.com.

1
2 Dated: March 7, 2014

MASLON EDELMAN BORMAN & BRAND, LLP

3 By: /s/ Joseph P. Ceronsky
4 Joseph P. Ceronsky (MN Bar No. 391059)
5 (admitted *Pro hac vice*)

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FLEMING

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